

REMARKS

This Amendment is being submitted as a supplement to the Response filed March 16, 2010.

Claim 1 is amended to recite that the cleansing cosmetic composition consists of 0.1 to 5 mass% of a lipopeptide compound, and 0.1 to 20 mass% of a polyoxyethylene glyceryl ether fatty acid ester, and optionally at least one ingredient selected from the group consisting of hydrocarbons, natural waxes, fatty acids, higher alcohols, alkylglyceryl ethers, esters, silicone oils, polyhydric alcohols, saccharides, polymers, alcohols, anionic surfactants, cationic surfactants, ampholytic surfactants, natural surfactants, ultraviolet ray absorbers, powders, color materials, plant extracts, amino acids, peptides, vitamins, factors acting like vitamins, antiseptic agents, antioxidanting agents, chelating agents, moisturizing agents, anti-inflammatory agents, pH adjusting agents, salts, α -hydroxy acids, whitening agents, essential oils, terpenes, fragrance and water. Support for the amendment can be found, for example, at pages 8-26 of the present specification. No new matter is added. Upon entry of the Amendment, which is respectfully requested, claims 1-15 will be pending.

At page 3 of the Office Action dated November 16, 2010, claims 1-15 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yoneda (WO99/62482) in view of Noda (JP07-304630).

The Examiner states that the difference between the Yoneda and the presently claimed invention is that Yoneda does not specifically teach the use of polyoxyethylene glyceryl fatty acid ester.

The Examiner states that Noda teaches that conventional cosmetics contain oils which require two steps of washing since the oils utilized in the makeup are not readily removed. The

Examiner states that Noda discloses that this problem can be avoided if the cosmetic composition contains polyoxyethylene glyceryl fatty acid ester. The Examiner states that when polyoxyethylene glyceryl fatty acid ester is used, not only does the composition work as a cosmetic, but it also provides a foaming action that allows for the removal of the makeup in a single step fashion.

Applicants traverse and respectfully request the Examiner to reconsider in view of the following remarks.

At [0005], Noda discloses that:

Basically, cleansing cosmetic for removing makeup should contain a lot of oil and oil components as mentioned above. On the other hand, cleansing cosmetic such as soap and cleansing foam which exhibits foaming property and freshen-up feeling mainly comprises hydrophilic ionic surfactants basically. Simple combination of these components aiming for achieving both effects results in counteracting the effects to each other: i.e. not only making the lather very little but also impairing the effect of removing makeup and therefore satisfactory products have not been made to the present.

Further, at [0007], Noda discloses that:

The present inventors have found that a cleansing cosmetic having excellent foaming property and freshen-up feeling as well as makeup cleansing ability can be obtained by combining polyoxyethylene glyceryl fatty acid ester and a specific maltitol ether and accomplished the present invention.

That is, Noda teaches that a simple combination of multiple components (*i.e.*, oil components and cleansing cosmetic comprising hydrophilic ionic surfactants) results in the components counteracting the effects of each other. However, Noda discloses that by combining polyoxyethylene glyceryl fatty acid ester and a specific maltitol ether, a positive result can be achieved.

Accordingly, neither Yoneda nor Noda discloses or suggests that using only polyoxyethylene glyceryl fatty acid ester achieves a positive result.

Further, Table 1 in the Examples of Noda shows that sample 1, in which only polyoxyethylene(20)glyceryl triisostearate is used as a surfactant, was inferior in foaming property and freshen-up feeling. In contrast, samples 2 to 5 illustrate that foaming property and freshen-up feeling were obtained by combining maltitol hydroxydodecyl ether with the surfactant.

Accordingly, a person having ordinary skill in the art would not expect to achieve a cleansing cosmetic having excellent foaming property and freshen-up feeling by using only polyoxyethylene glyceryl fatty acid ester in cleansing cosmetics, as the Examiner suggests.

Further, as shown in the previously submitted Declaration, by adding a specific amount of polyoxyethylene glyceryl ether fatty acid ester in a specific amount of a lipopeptide compound, the cleansing cosmetic of the present invention achieves the unexpectedly superior results of improved washability and preservation stability of the cosmetics.

For at least the reasons discussed above, it is submitted that the presently claimed invention is patentable over the cited references. Applicants thus respectfully request reconsideration and withdrawal of the § 103 rejection of claims 1-15 based on Yoneda and Noda.

At page 6 of the Office Action, claims 1-15 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sakai (JP2000-136114) in view of Yoneda.

Applicants traverse and respectfully request the Examiner to reconsider in view of the following remarks.

Sakai relates to a cleansing cosmetic containing N-acyl glutamic acid diester, which is excellent in makeup removing ability as well as in feel (skin comfort) ([0015] to [0016]).

Moreover, the cosmetic of Sakai contains N-acyl glutamic acid diester as an essential ingredient.

The cosmetic of amended claim 1 does not contain N-acyl glutamic acid diester and recites the transitional phrase "consisting of" which excludes any element, step, or ingredient not specified in the claim. Therefore, if a person having ordinary skill in the art were to have modified the cleansing cosmetic of Sakai to contain the lipopeptide of Yoneda, the presently claimed invention would not have been achieved.

Furthermore, in the Examples of Sakai, the composition containing 5 wt% of N-lauroyl glutamic acid di(cholesteryl dioctyldodecyl) and 1.3 wt% of isostearic acid polyoxyethylene glyceryl (5EO) exhibited an excellent cleansing ability and feel (skin comfort). In contrast, a composition in which liquid paraffin, jojoba oil, olive oil or oleyl alcohol was used in place of N-lauroyl glutamic acid di(cholesteryl dioctyldodecyl) was inferior in cleansing ability and feel (skin comfort), even though the composition contained isostearic acid polyoxyethylene glyceryl (5EO). Accordingly, Sakai does not suggest that the isostearic acid polyoxyethylene glyceryl (5EO) contributes to improved cleansing ability and feel (skin comfort), and a person having ordinary skill in the art would not have been motivated to combine the isostearic acid polyoxyethylene glyceryl (5EO) as disclosed in Sakai with the composition as taught by Yoneda to arrive at the presently claimed invention.

For at least the reasons discussed above, the presently claimed invention is patentable over the cited references. Applicants thus respectfully request reconsideration and withdrawal of the § 103 rejection of claims 1-15 based on Yoneda and Sakai.

At page 9 of the Office Action, claims 1-6, 8, 10, 12 and 14 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ito (JP09-165320) in view of Yoneda.

Applicants traverse and respectfully request the Examiner to reconsider in view of the following remarks.

Neither Yoneda nor Ito discloses or suggests using polyoxyethylene glyceryl fatty acid ester. Therefore, the present invention is not rendered obvious based on Yoneda and Ito, whether taken alone or in combination.

In addition, the Examiner states that Ito teaches a cleansing cosmetic formulation in the form of a hair rinse agent composition which has a high rinsing effect and is excellent in feel. However, the hair conditioner composition of Ito does not have a high rinsing effect. Instead, the hair conditioner composition of Ito is used to replenish oil content to hair and make hair supple after washing. Thus, Ito is completely different from a cleansing cosmetic.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the § 103 rejection of claims 1-6, 8, 10, 12 and 14 based on Yoneda and Ito.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited.

If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

Jennifer M. Hay
f Reg. No. 40,841
Bruce E. Kramer
Registration No. 33,725

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: June 16, 2010